



Division of Adult Services and Aging

Mandatory Reporting of Abuse and Neglect

June 29, 2011

History of Chapter 22-46

- Chapter 22-46 Abuse, Neglect, or Exploitation of Elders or Adults with Disabilities
- Chapter 22-46 was initially adopted in 1986 creating a criminal offense for abuse, neglect and exploitation of adults who are disabled, but did not include elders.
- In 2007 “elder” was added to the class of protected individuals providing a voluntary reporting process, and also provided immunity from liability for reporting.
- The rest of Chapter 22-46 has been in place for several years.

History of Chapter 22-46 (Continued)

- 22-46-1 Definitions
- 22-46-1.1 Neglect – Exclusions from definitions
- 22-46-3 Theft by Exploitation – Intent to add mandatory reporting next legislative session
- 22-46-5 Investigating Violations - Law enforcement shall cooperate with and assist DSS
- 22-46-7 & 8 Reporting and Immunity

22-46-1 Definition of Terms

- “Abuse,” physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or a disabled adult;
- “Disabled adult,” a person eighteen years of age or older who suffers from a condition of mental retardation, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care;

22-46-1 Definition of Terms (Continued)

- “Elder,” a person sixty-five years of age or older;
- "Exploitation," the wrongful taking or exercising of control over property of an elder or a disabled adult with intent to defraud the elder or disabled adult; and
- “Neglect,” harm to an elder's or a disabled adult's health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the elder's or disabled adult's health or welfare, within the means available for the elder or disabled adult, including the failure to provide adequate food, clothing, shelter, or medical care.

22-46-1.1 Neglect – Exclusions from Definitions

- For the purposes of this chapter, the term, neglect, does not include a decision that is made to not seek medical care for an elder or disabled adult upon the expressed desire of the elder or disabled adult; a decision to not seek medical care for an elder or disabled adult based upon a previously executed declaration, do-not-resuscitate order, or a power of attorney for health care; a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law; or the failure to provide goods and services outside the means available for the elder or disabled adult.

22-46-2 Abuse or Neglect of Elder or Adult with a Disability --Felony

- Any person who abuses or neglects an elder or a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony.

22-46-3 Theft by Exploitation--Penalty

- Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or a disabled adult, and having been entrusted with the property of that elder or disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A.

22-46-5 Investigating Violations

- In investigating violations of this chapter, law enforcement agencies shall cooperate with and assist the Department of Social Services.

22-46-7 Report of Abuse, Neglect, or Exploitation

- A report of abuse, neglect, or exploitation under this chapter may be made orally or in writing to the state's attorney of the county in which the elder or disabled adult resides or is present, to the Department of Social Services, or to the law enforcement officer. The state's attorney or law enforcement officer, upon receiving a report, shall immediately notify the Department of Social Services.

22-46-8 Immunity from Liability for Reporting Abuse, Neglect, or Exploitation

- Any person who, in good faith, makes a report of abuse, neglect, or exploitation of any elder or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the report. This immunity extends in a like manner to any public official involved in the investigation of abuse, neglect, or exploitation of any elder or disabled adult, or to any person or institution who in good faith cooperates with any public official in an investigation. The provisions of this section do not extend to any person alleged to have committed any act of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any such act.

Senate Bill 14

- Entitled An Act to require the mandatory reporting of abuse or neglect of elderly or disabled adults.
- Amends Chapter 22-46 to establish a mandatory reporting system for abuse and neglect of elders or adults with disabilities similar to the mandatory reporting process that exists for child abuse.

Senate Bill 14

- SB 14 was drafted in collaboration with and is supported by the Department of Health, the Department of Human Services, AARP, the Advisory Council on Aging, the Council of Mental Health Centers, Association of Community Based Services, the South Dakota Association of Healthcare Organizations, South Dakota Health Care Association and the Network Against Family Violence & Sexual Assault.

Recognizing Signs of Abuse, Neglect, and Exploitation

- Signs of physical injury such as bruises, welts, burns, lacerations, scars, broken bones or serious internal injuries.
- Lack of necessities such as heat, food, water, medical care and/or unsafe conditions in the home.
- Multiple injuries, repeated or untreated injuries, or injuries not compatible with history.
- Inappropriate and/or inadequate clothing for weather conditions.

Recognizing Signs of Abuse, Neglect, and Exploitation (Continued)

- Behavioral signs such as agitation, anxiety, resignation, hesitation to reply, anger, depression, or fear.
- Social isolation or inappropriately leaving an older person alone for long periods of time.
- Caregiver shows aggressive behavior such as threats, insults, or other verbal harassment towards the care receiver.

Recognizing Signs of Abuse, Neglect, and Exploitation (Continued)

- Frequent use of the emergency room and/or hospital or health provider.
- Evidence of inadequate or inappropriate administration of medication.
- Lack of necessary equipment such as walkers, canes, bedside commode.
- Lack of necessities such as heat, food, water and unsafe conditions in the home.

Recognizing Signs of Abuse, Neglect, and Exploitation (Continued)

- Soiled clothing or bed; untreated bed sores.
- Dehydration and/or malnourishment without illness-related cause.
- Misuse of money or person property for another person's monetary or personal gain.
- Unauthorized sale of real or personal property.

Mandatory Reporters

- Effective July 1, 2011 South Dakota law requires certain individuals to report knowledge or reasonable suspicion of abuse or neglect of elders and adults with disabilities.
- Group 1 includes individuals in the medical and mental health professions.
- Group 2 includes employees or entities that have ongoing contact with and exposure to elders and adults with disabilities.

Group 1 Mandatory Reporters Include:

- Physician, dentist, doctor of osteopathy, chiropractor, optometrist, podiatrist, religious healing practitioner, hospital intern or resident, nurse, paramedic, emergency medical technician, social worker, or any health care professional;
- Long-term care ombudsman;
- Psychologist, licensed mental health professional, or counselor engaged in professional counseling;
- State, county, or municipal criminal justice employee or law enforcement officer.

Group 1 Mandatory Reporters Include: (Con't)

- Reporters listed in Group 1 who know, or have reasonable cause to suspect that an elder or adult who is disabled is being abused or neglected must report within 24 hours (22-46-7) to:
 - DSS – ASA (Protective services agency);
 - Law enforcement; or
 - State's attorney.
- The report can be made either orally or in writing.

Group 2 Mandatory Reporters Include (Con't)

- Any staff member of a nursing facility, assisted living facility, adult day care center, or community support provider, or any residential care giver, individual providing homemaker services, victim advocate, or hospital personnel engaged in the admission, examination, care, or treatment of elders or disabled adults.

Group 2 Mandatory Reporters Include (Con't)

- Reporters listed in Group 2 who know, or have reasonable cause to suspect that an elder or adult who is disabled is being abused or neglected must report within 24 hours to:
 - To the person in charge of the institution; or
 - To the person in charge of providing services.
- The person in charge shall report the information to:
 - DSS - ASA (protective services agency);
 - Law enforcement; or
 - State's attorney.

Mandatory Reporting

- Facilities or programs that are licensed or regulated by the Department of Health or Department of Human Services will follow procedures in place for reporting.
- A mandatory reporter who knowingly fails to make the required report is guilty of a Class 1 misdemeanor.
- Mandatory reporters who in good faith make a report of abuse or neglect of an elder or adult with disabilities are immune from liability.

Voluntary Reporting

- Any person who knows or has reason to suspect that an elder or adult who is disabled has been abused or neglected as defined in § 22-46-2 or 22-46-3 may report that information, regardless of whether that person is a mandatory reporter.
- Voluntary reporters who in good faith make a report of abuse or neglect of an elder or adult with disabilities are immune from liability.

Scenario 1

Victim: 74 year old woman with dementia

Woman is found wandering outside in the middle of winter dressed inappropriately.

Who to report to: Local law enforcement or Department of Social Services Adult Services and Aging Office as South Dakota's protective services agency.

Scenario 2

Victim: 90 yr. old woman

Perpetrator convinced victim that she had won a lottery and needed to pay him \$30,000 in order for him to get her the winnings. Financial institution had stopped some of the checks; perpetrator had cashed \$29,500.

Who to report to: Local State's Attorney's office, or local law enforcement, or Department of Social Services Adult Services and Aging Office as South Dakota's protective services agency.

Scenario 3

Victim: 63 yr. old female with physical disability

Victim was left at home alone and had fallen out of her wheelchair. When she was found an ambulance transported her to the hospital. She had dried feces and urine on her and she was in terrible shape with skin breakdown. Her wheelchair was also covered in feces and urine.

Who to report to? Local State's Attorney's office, or local law enforcement, or Department of Social Services Adult Services and Aging Office as South Dakota's protective services agency.

Scenario 4

Victim: 82 yr. old female resident of nursing facility

Resident found on floor next to bed and was injured.

Who to report to? Department of Health as the governing licensing and regulatory agency.

Although reporting to DOH is mandated by rule, if the care plan wasn't followed and neglect by staff is suspected or injury sustained was a contributing factor to later death of resident, voluntary report to the local or state Ombudsman.

Scenario 5

Victim: 76 year old male, resident of a nursing facility.

Nurse is unable to locate resident. Resident is not signed out and staff is unable to locate resident in facility.

Who to report to: Law enforcement and Department of Health

Although reporting to DOH is mandated by rule, voluntary report to the local or state Ombudsman.

Scenario 6

Victim: 68 year old female, resident of a nursing facility

Resident informs charge nurse that she was raped by a male staff member during the evening shift.

Who to report to: Law enforcement and Department of Health

Although reporting to DOH is mandated by rule, voluntary report to the local or state Ombudsman.

Scenario 7

Victim: 67 year old male

Neighbor calls to report she has not seen her neighbor for a few days. She knows he had been recently hospitalized and returned home. Now she is concerned about lack of activity at the house. For a week or two there had been in-home visits but now no activity.

Who to report to: Local law enforcement, or Department of Social Services Adult Services and Aging Office as South Dakota's protective services agency.

Information to Provide with Report

- Report the following if you know or have reason to believe someone needs protection:
 - Name, age and address of the adult who is in danger.
 - Names and addresses of guardian or relatives, if known.
 - Names of other people involved, if any.
 - Description of the situation causing the danger.

Report Follow-Up

- You may be contacted for more information.
- When report is not anonymous, reporter will be sent a letter confirming the referral has been received.
- Information reported will be kept confidential.
- Outcome of referral will not be shared.

Future

- Discussions with the Banker's Association.
- Intend to add exploitation to mandatory reporting next legislative session.
- Watch for brochure titled "Abuse, Neglect and Exploitation of Elders or Adults with Disabilities".
 - Place an order or print the brochure from Forms and Documents area of website.
- Website being updated to include mandatory reporting information.

Contact Information

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